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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES GLICA,
Petitioner,
v.
BEARD,
Respondent.

No. 2:14-cv-0551 CKD P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner is a California prisoner proceeding pro se with a petition for writ of habeas corpus under 28 U.S.C. § 2254. He challenges 2001 Sacramento County convictions for, among other things, first degree murder.

A review of the docket for case number 2:11-cv-3247 GEB GGH P reveals that petitioner challenged the convictions at issue in this action in that action as well. On May 10, 2012, the habeas petition in 2:11-cv-3247 GEB GGH P was dismissed as time-barred. Before petitioner can proceed with the instant successive petition, he must obtain authorization from the Ninth Circuit Court of Appeals. 28 U.S.C. § 2244(b)(3); see Murray v. Greiner, 394 F.3d 78, 81 (2d Cir. 2005) (dismissal of habeas petition as time-barred “constitutes an adjudication on the merits that renders future petitions under § 2254 challenging the same conviction ‘second or successive’ petitions under [28 U.S.C. § 2244(b)]”). It does not appear petitioner has obtained the required

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1 authorization. Therefore, petitioner's habeas petition must be dismissed without prejudice to its
2 re-filing upon petitioner obtaining the required authorization.

3 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court assign a district
4 court judge to this case.

5 IT IS HEREBY RECOMMENDED that

- 6 1. Petitioner's application for a writ of habeas corpus be dismissed without prejudice; and
- 7 2. This case be closed.

8 These findings and recommendations are submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
10 after being served with these findings and recommendations, petitioner may file written
11 objections with the court and serve a copy on all parties. Such a document should be captioned
12 "Objections to Magistrate Judge's Findings and Recommendations." In his objections petitioner
13 may address whether a certificate of appealability should issue in the event he files an appeal of
14 the judgment in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district
15 court must issue or deny a certificate of appealability when it enters a final order adverse to the
16 applicant). Petitioner is advised that failure to file objections within the specified time may waive
17 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 Dated: March 6, 2014

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21 CAROLYN K. DELANEY
22 UNITED STATES MAGISTRATE JUDGE

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